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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/797,036 | 03/11/2004 | N. Convers Wyeth | SAIC0042-DIV1 | 4655 |
| 27510 | 7590 | 08/24/2004 | EXAMINER | |
| KILPATRICK STOCKTON LLP 607 14TH STREET, N.W. WASHINGTON, DC 20005 | | | DONOVAN, LINCOLN D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2832 | |

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,036

Applicant(s)

WYETH ET AL.

Examiner

Donovan Lincoln

Art Unit

2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ovshinsky et al. [US 5,296,716].

Regarding claims 1-2, 10 and 15, Ovshinsky et al. disclose a switch [30, figure 1] for use in circuits which interacts with electromagnetic radiation comprising:

- a substrate [figure 1] for supporting components of the switch;
- first and second conductive elements [42, 12] on the substrate for connecting to first and second components [(38, 40), (32, 34)] of the circuit; and
- a switch element [36] made up of a switching material on the substrate connecting the first and second conductive elements comprised of a compound which exhibits a bi-stable phase behavior [column 2, lines 10-34] and switchable between a first impedance state value and a second impedance state value by application of energy thereto affecting current flow between the first and second conductive elements [column 12, lines 45-64].

Regarding claims 3-6, Ovshinsky et al. disclose the switch being connected to an energy source via separate leads [figure 4, column 12, lines 45-64].

Regarding claims 7-8, Ovshinsky et al. disclose the switching material being a chalcogenide alloy formed of $\text{Ge}_a\text{Sb}_b\text{Te}_c$ where a is equal to or less than 70%, b is above 15% and less than 50% and c is between about 17% and less than 44% [column 11, lines 1-24].

Regarding claim 12, Ovshinsky et al. discloses the first and second conductive elements being formed of aluminum [column 13, lines 8-31].

Regarding claim 15, Ovshinsky et al. discloses the switch being used in a SRAM configuration [column 17, lines 3-10].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ovshinsky et al.

Ovshinsky et al. disclose the instant claimed invention except for the specific materials used for the switching and conductive elements and the specific shape of the conductive element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the materials used and shapes for the elements, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mikolajick [US 2003/0072195A1].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donovan Lincoln whose telephone number is (571) 272-1988. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on (571) 272-1990. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ldd


LINCOLN DONOVAN
PRIMARY EXAMINER
GROUP 2100